

ORDINANCE NO. 15-08

AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA, RELATING TO THE ESTABLISHMENT OF A STORMWATER MANAGEMENT PROGRAM; CREATING A STORMWATER MANAGEMENT UTILITY; ESTABLISHING A STORMWATER UTILITY FEE AND STORMWATER MANAGEMENT FUND; PROVIDING FOR CODIFICATION AND SCRIVENER'S ERRORS; CONFLICTS OF LAW, SEVERABILITY; MODIFICATION; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, The Town of Fort Myers Beach, Florida, (Town) desires to develop a Stormwater Utility to finance the operation, construction, and maintenance of stormwater devices; for stormwater system planning; for review of development plans for compliance with stormwater management codes; and for bay, spring, and river quality management; and

WHEREAS, Section 403.0893, Florida Statutes, authorizes the Town to establish one or more stormwater utilities and adopt stormwater utility fees or assessments sufficient to plan, construct, operate, and maintain stormwater management throughout the Town, and to establish and set aside, as a continuing source of revenue, other funds sufficient to plan, construct, operate, and maintain stormwater management systems throughout the Town;

WHEREAS, Section 403.0893(3), Florida Statutes, authorizes the Town to create, alone or in cooperation with the other counties, municipalities, and special districts, one or more stormwater management system benefit areas within Lee County, Florida, and specifically providing all property owners within the benefit areas may be assessed a Stormwater Utility fee or assessment to fund the planning, construction, operation, maintenance, and administration of a public stormwater management system for the benefited area;

WHEREAS, Section 403.0893(3), Florida Statutes, further provides the fees to be assessed within stormwater management system benefit areas shall be calculated to generate sufficient funds to plan, construct, operate, and maintain stormwater management systems, and authorizes the Town to utilize the non-ad valorem levy, collection, and enforcement methods provided for in Chapter 197, Florida Statutes;

WHEREAS, the cost of operating and maintaining all stormwater management systems, and the financing of existing and future necessary repairs, replacements, improvements, and extensions thereof, should, to the extent practicable, be allocated in relationship to the benefits enjoyed and services received therefrom;

WHEREAS, the Town has determined the adoption of this Ordinance, and the creation of stormwater management system benefit areas under the terms, conditions, and criteria set forth here, is necessary to protect the health, safety, and welfare of the citizens of the Town.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, THAT:

I. Findings and Purpose of Utility

(1) Findings of Ordinance. The Town finds uncontrolled drainage and development of land has a significant adverse impact upon the health, safety, and welfare of the Town community.

Further, the Town finds as follows:

- (a) Stormwater runoff is capable of carrying pollutants into receiving bodies, thereby degrading water quality;
- (b) The increase in nutrients, such as phosphorous and nitrogen, resulting from stormwater runoff accelerates eutrophication of receiving water bodies and adversely affecting flora and fauna;
- (c) Improperly channeling water increases the velocity of stormwater runoff and increases erosion and sedimentation;
- (d) Construction requiring the alteration of natural topography and removal of vegetation tends to increase erosion;
- (e) Siltation of water bodies resulting from increased erosion decreases the capacity of water bodies to hold and transport water, interferes with navigation, and harms flora and fauna;
- (f) Impervious surfaces increase the volume and rate of stormwater runoff and allow less water to percolate into the soil, thereby decreasing groundwater recharge;
- (g) Improperly managed stormwater runoff may increase the incidence and intensity of flooding, which endangers property and human welfare;
- (h) Improperly managed stormwater runoff may interfere with the maintenance of spring quality and disrupt biological productivity;
- (i) Substantial economical losses may result from adverse impacts upon the waters of the Estero Bay ecosystem;
- (j) the Town maintains a system of storm and surface water management facilities including, but not limited to, conduits, manholes, channels, ditches, drainage easements, retention and detention basins, infiltration facilities, and other components as well as natural waterways;
- (k) The stormwater system in the Town needs regular maintenance and improvements;
- (l) All real property in the Town either uses or benefits from the maintenance of the stormwater system;
- (m) To minimize damage from flooding, while recognizing that natural fluctuations in water levels are beneficial; and
 - (a) To protect, restore, and maintain the habitat of fish and wildlife.

II. Definitions

- (1) "Base Rate" means the total cost of the program to the Director of implementing the system.
- (2) "Benefit Area" means the geographic area within the municipality, as determined by the Director, within which customers are subject to the Fee and benefit from the System. Property located within the Benefit Area may remain subject to flooding and other adverse stormwater impacts.

- (3) “Bonds” means revenue bonds, notes, loans or any other debt obligations issued or incurred to finance the Program.
- (4) “Commercial” means properties including to time shares, hotels, motels, businesses and all other uses not otherwise defined in another classification.
- (5) “Customer” means any person located in the Benefit Area who owns, leases, or otherwise is responsible for payment of the Fee charged to a property. A person owning, leasing, or otherwise responsible for a property not containing Impervious Surface is not a customer.
- (6) “Debt Service” means, with respect to any particular fiscal year and any particular series of Bonds, an amount equal to the sum of all interest payable on such Bonds during such fiscal year plus any principal installments of such Bonds during such fiscal year.
- (7) “Developed Property” means real property which has been altered from its original state by the addition of any improvements, such as a building, structure, or impervious surface. For new construction, property shall be considered developed pursuant to this Ordinance (a) upon issuance of a certificate of occupancy, or upon completion of construction or final inspection if no such certificate is issued; or (b) if construction is at least 50 percent complete and construction is halted for a period of three (3) months.
- (8) “Director” means the director of the stormwater utility. This shall be the Town Manager or Town Manager’s Designee.
- (9) “Dwelling Unit” means a single unit or apartment providing complete, independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking, and sanitation.
- (10) “Equivalent residential unit” or “ERU” means the average square footage of a detached single-family residential property determined pursuant to this ordinance.¹
- (11) “ERU Rate” means a portion of the Utility Fee charged per ERU, as established.¹
- (12) “Fee”, “Stormwater Utility Fee”, or “Utility Fee” means the monetary charge established under this ordinance, levied on owners or users of parcels or pieces of real property in the system benefit area, and being sufficient to fund, construct, operate, and maintain the stormwater management system.² The Director shall base the Fee upon the equitable unit cost approach and design the funding to generate capital to retrofit existing stormwater management systems, build new treatment systems, operate facilities, and maintain and service debt.³ The stormwater utility fee is in addition to any other fee the municipality has the right to charge under any other rule or regulation of the municipality. The Fee is established to fund all or a portion of the Operating Budget.
- (13) “Fiscal Year” means the 12-month financial period for which the Town’s annual business budget is based and includes the period from October 1 of the current calendar year through September 30 of the following calendar year.
- (14) “Impervious Surface” means a human-made surface compacted or covered with material resistant to infiltration by water and impeding or restricting percolation of surface water into the soil. Impervious surfaces include, but are not limited to, most conventionally surfaced streets, roofs, roof extensions, sidewalks, patios, driveways, parking lots, oiled, graveled, graded, or compacted surfaces, porches, sidewalks, parking areas and athletic courts, and semi-impervious areas, such as compacted clay.⁴
- (15) “Impervious Surface Area” means the number of square feet of horizontal surface covered by impervious surfaces. Measurements to determine impervious surface area should be made between exterior or outermost portions of the impervious surface.⁵

(16) "Levy" means the imposition and collection of a non-ad valorem assessment, stated in terms of rates, against all appropriately located property by a governmental body authorized by law to impose non-ad valorem assessments.⁶

(17) "Multi-Family Residential Unit" means a developed property, which serves the primary purpose of providing a permanent and for which one meter serves more than one residential unit such as apartments, condominiums, mobile homes and recreational vehicles or a combination thereof.

(18) "Operating Budget" means the annual Utility operating budget adopted by the Town for one Fiscal Year. The Director shall include in the Operating Budget calculations of all publicly owned lands used for offices, maintenance yards, storage facilities, park and recreation facilities, libraries, schools, colleges, universities, and public housing.

(19) "Operation and Maintenance" means the current expenses, paid or accrued, of operation, maintenance, and current repair of the System, as calculated in accordance with sound accounting practice, and includes, but is not limited to, insurance premiums, administrative expenses, labor, executive compensation, materials and supplies costs for current operations, and charges for the accumulation of appropriate reserves for current expenses not annually incurred, but which may reasonably be expected to incur in accordance with sound accounting practice.

(20) "Person" means a natural or artificial person (such as a corporation) recognized by law to have the rights and duties of a human being.⁷ Person means the state or any agency or institution thereof, the United States or any agency or institution thereof, or any municipality, political subdivision, public or private corporation, individual, partnership, association, or other entity and includes any officer or governing or managing body of the state, the United States, any agency, any municipality, political subdivision, or public or private corporation.⁸

(21) "Property owner" includes any person who has the right to possess, use, and convey title of real property. Property owner may include a tenant, if chargeable under tenant's lease for the maintenance of the subject real property, and any agent of the owner or tenant, including the developer.

"Residential Utility Customer" means a Stormwater Utility Customer who lives in a dwelling unit. Residential Utility Customer does not include the place where a corporation or other enterprise conducts or is authorized to conduct business.⁹

(22) "Revenue" means all rates, fees, assessments, rentals or other charges or other income received by the Utility, in connection with the management and operation of the System, including amounts received from the investment or deposit of moneys in any fund or account and any amounts.

(23) "Single Family Residential Unit" means a developed property, which serves the primary purpose of providing a permanent dwelling unit to a single family. A single family detached dwelling or a townhouse containing an accessory apartment or second dwelling unit is included in this definition. This category applies to a single-family dwelling or to each residential unit in a multiple family dwelling building where each unit is metered separately.

(24) "Single Family Residential Unit" means a developed property, which serves the primary purpose of providing a permanent dwelling unit to a single family. A single family detached dwelling or a townhouse containing an accessory apartment or second dwelling unit is included in this definition. This category applies to a single-family dwelling or to each residential unit in a multiple family dwelling building where each unit is metered separately.

(25) "Stormwater" means the flow of water which results from a precipitation event and includes, but is not limited to, stormwater runoff, surface runoff, street wash, waters related to street cleaning or maintenance, and drainage.¹⁰

(26) "Stormwater Management Program" means the comprehensive strategies for dealing with stormwater quantity and quality issues. Stormwater management includes, but is not limited to, the planning, design, construction, regulation, improvement, repair, maintenance, and operation of facilities and programs relating to water, flood plains, flood control, grading, erosion, tree conservation, and sediment control.¹¹

(27) "Stormwater Management Fund", "Enterprise Fund", or "Fund" means the fees, special assessments, and other revenue collected by the Director exclusively to fund the planning, construction, operation, and maintenance of the Town's stormwater management system.¹²

(28) "Stormwater Management System" means a system which is designed, constructed, or implemented to control discharges caused by precipitation events and incorporates methods to collect, convey, absorb, inhibit, treat or reuse water to prevent or reduce flooding, overdrainage, environmental degradation, and water pollution, or otherwise affect the quantity and quality of discharges from the system.¹³

(29) "Stormwater Utility" or "Utility" means the funding of a Program by assessing to the beneficiaries the cost of the program based on their relative contribution to its need. The Stormwater Utility operates as a typical utility, which bills services regularly, similar to water and wastewater services.¹⁴

(30) "Stormwater Utility Customer" means a person to whom the Fee is assigned and billed.

(31) "Town" refers to The Town of Fort Myers Beach, Florida.

(32) "User" means the owner of record of property or other party subject to the Fee imposed by this ordinance.¹⁵

(33) III. Creation of Utility

(1) Establishment of Utility. Pursuant to the home rule power of Article VIII, Section 2(b) of the Florida Constitution, Florida Statutes Chapter 166, as amended, and Florida Statutes Sections 403.0891 and 403.0893, as amended, the Town hereby establishes a stormwater management utility. The Director of the utility shall be responsible for the Town's stormwater management program and system and for all activities and facilities necessary to provide control of stormwater quantity and quality in the Town.

(2) Managing Body of Utility. The stormwater utility will consist of a managing body including a manager or director and such staff as the Town's managing body shall authorize.

(3) Powers and Duties of Director. The Town shall appoint a Director, who shall administer the stormwater management program. The Town grants authority to the Director for the ascertainment, computation, and collection of the Fees imposed under this ordinance and for the proper administration and enforcement of this ordinance. The Director may take any reasonable measures necessary to develop an initial stormwater plan, including, but not limited to:

(a) Charge a Fee to customers within the Benefit Area;

(b) Prepare necessary regulations to implement the ordinance, forward the regulations to the Town council for consideration and adoption, and adopt any procedures required to implement the regulations or carry out other responsibilities for the effective administration of the System;

(c) Administer the acquisition, design, construction, maintenance, and operation of the System, including capital improvements designated in the stormwater management plan;

- (d) Administer, interpret, and enforce this ordinance and all regulations and procedures adopted relating to the design, construction, maintenance, operation, and alteration of the system, including but not limited to the quantity, quality, and/or velocity of the stormwater conveyed;
- (e) Inspect private systems as necessary to determine the compliance of such systems with this ordinance and any regulations adopted under this division;
- (f) Advise the Town council and other Town departments on matters relating to the system;
- (g) Prepare and revise a comprehensive stormwater management program for adoption by the Town council at least every five fiscal years;
- (h) Review, inspect, approve, and deny plans for extensions to the system;
- (i) Establish and enforce regulations to protect and maintain water quality within the system in compliance with established federal, state, and local water quality standards as adopted or amended;
- (j) Ensure an adequate and stable base rate to achieve a stable financial position for the system by analyzing and amending:
 - (i) the cost of services and benefits provided, and
 - (ii) the system and structure of the stormwater management assessments and other fees, charges, fines, and revenues of the system;
 - (iii) any other factors relevant to maintaining a stable financial position; and
- (k) Seek any grant capable of funding capital improvements for stormwater management.

IV. Structure of Equivalent Residential Unit

- (1) Establishment of the Equivalent Residential Unit. For purposes of calculating the service charge, the Director shall establish the equivalent residential unit (ERU).
- (2) Determination of ERU. The Director, considering the general acceptance and use by other stormwater systems of a source and the reliability and general accuracy of the source, may determine the source of data from which to establish the ERU. Using the property tax assessor's rolls, site examination, mapping information, aerial photographs, and other reliable information, the Director shall determine the ERU to apply to all non-exempt property within the benefit area.
- (3) Determination of ERU Rate. For purposes of determining the ERU Rate, the Director shall classify all property within the Benefit Area according to the number of ERUs the property occupies. The ERU Rate shall be based on a tiered rate system which groups residential parcels into comparable impervious area categories and establishes comparable ERU conversion rates for non-residential parcels.¹⁶

V. Implementation of Fee

- (1) Establishment of Fee. The Director shall impose on all non-exempt properties containing impervious surface and located within the benefit area a fee, which the Director, at least once every fiscal year, shall calculate in the manner and amount prescribed by this ordinance.
- (2) Notice of Establishment of Fee. Prior to establishing or amending the fee, the Director, on or before the thirtieth business day before the Director hosts a meeting to adopt or amend a fee, shall advertise his or her intent to do so by publishing notice in a newspaper of general circulation in the Town.
- (3) Charges in Fee. The Director shall include in the fee the following types of charges:
 - (i) (a) Charge for Services. The Director shall include in the fee a service charge reflective of the cost of providing services and facilities to properly control stormwater runoff quantity and

quality. In determining the service charge, the director shall consider the factors: the amount of impervious surface area in the benefit area;

(ii) the intensity of development within the benefit area; the type of land uses in the benefit area;

(iii) the amount, if any, of on-site stormwater treatment.

(b) Charges for Administrative and Public Facilities. The Director shall include in the fee administrative and public facilities charges intended to recover the stormwater management costs of service unrelated to the size or intensity of development of properties. The Director may include in the Administrative and Public Facilities Charges:

(i) The cost of billing and accounting and administrative and overhead expenses;

(ii) The cost of managing runoff from public facilities; and

(iii) Other appropriate administrative and public facilities costs.

(c) Charges for Special Circumstances. The Director, if appropriate, shall include in the Fee special charges structured to recover the cost of providing to certain persons, entities, and properties stormwater management services not commonly required by all customers. Such stormwater management services may include, but are not limited to, plan review and inspection, site inspections, water quality monitoring and mitigation activities, and actions to abate private property conditions not complying with adopted Town standards or interfering with proper stormwater management.

(4) Special Assessment Districts. If the Director deems it necessary to adequately control and treat stormwater runoff, the Director may create a special assessment district within the benefit area and charge to customers in the special assessment district all or a portion of the associated costs to construct, replace, retrofit, implement, operate, or maintain a stormwater conveyance and management system for that specific area.

VI. Base Rate of Utility

Determination of Base Rate. The Director shall establish/adjust a base rate at least once every three fiscal years to generate sufficient funds to plan, construct, operate, and maintain the system.

VII. Collection of Fee

(1) Schedule of Billing. The Director shall mail to all Customers a stormwater utility bill, concurrent with each Customer's water bill mailing.

(2) Method of Payment. The customer shall pay to the Director in person at the Town Hall (2525 Estero Boulevard, Fort Myers Beach, FL) or by mail the Fee.

(3) Schedule of Payment. The customer shall pay the fee on or before the due date stated on the bill.

(4) Combination of Utility Bills. If the Director elects to combine the stormwater utility fee with other utilities in the same bill, the utility department shall render a monthly utility bill containing the stormwater utility fee and any other utilities.

(5) Customers who are on a fixed income, receive social security or disability, may qualify for a preferred bill due date. Annual application must be submitted, with the appropriate documentation to qualify for this program. The bill is mailed with other bills within the same billing cycle, however, the bill due date is the next preferred due date but not less than the number of days given other customers within the same billing cycle.

(6) Collection with Tax Rolls. If desired, the Director may use the uniform method of collecting the stormwater utility fee pursuant to Florida Stat. § 197.3632.¹⁷

VIII. Revenue Sources for Utility

(1) Sources of Funding. The stormwater utility funding sources may include the following:

- (a) Stormwater utility fees;
- (b) Civil penalties and damage assessments imposed for or arising from the violation of the stormwater utility ordinance;
- (c) Stormwater permit and inspection fees;
- (d) Other funds or income obtained from federal, state, local, and private grants or revolving funds;
- (e) Bonds issued using future stormwater utility revenue as collateral; and
- (f) Any other reasonable means.

(2) Insufficiency of Fee Revenue. If the fees collected are insufficient to finance the base rate, the Director, if the Town's governing body approves, may pay the cost of the program from other Town funds.

IX. Establishment of Enterprise Fund.

The Director shall establish an enterprise fund exclusively for the deposit and withdrawal of all revenue collected pursuant to this ordinance. The Director shall use the enterprise fund for the independent and separate accounting of all revenues, expenditures, assets and liabilities, and earnings and obligations of the utility and including the following purposes:

- (a) The acquisition by gift, purchase, or condemnation of real and personal property and interests therein, necessary to construct, operate, and maintain stormwater control facilities;
- (b) All costs of administration and implementation of the stormwater management program, including the establishment of reasonable operating and capital reserves to meet unanticipated or emergency stormwater management requirements;
- (c) Engineering and design, debt service and related financing expenses, construction costs for new facilities, and enlargement or improvement of existing facilities;
- (d) Operation and maintenance of the System;
- (e) Monitoring, surveillance, and inspection of stormwater control devices;
- (f) Water quality monitoring and water quality programs;
- (g) Retrofitting developed areas for pollution control;
- (h) Inspection and enforcement activities;
- (i) Billing and administrative costs; and
- (j) Other activities reasonably required to carry out the stormwater management program.

X. Exemption from Fee.

- (a) Exemptions shall not be granted.
- (b) Any customer requesting an appeal shall follow the procedures outlined in XI. Adjustment of Fee.

XI. Adjustment of Fee

- (1) Availability of Adjustment. The Director may adjust up or down a customer's fee, with any adjustment request and resulting adjustment being documented in writing.
- (2) Basis for Adjustment. If the Director adjusts a customer's fee, the Director shall consider the customer's stormwater management practices, including, but not limited to reductions in runoff volume including discharge to a non-Town drainage system and properly designed, constructed, and maintained on-site retention and treatment facilities. The Director shall also

base the adjustment decision on the approximate percentage of any significant variation in the volume, rate, or quality of stormwater emanating from the property as compared to similarly-situated properties. In determining the similarity of properties, the Director shall consider the location, geography, size, use, impervious area, on-site facilities, and any other factors bearing on the variation.¹⁸ All adjustments shall be in writing.

(3) Procedure for Adjustment. A customer shall submit to the Director any request for utility fee adjustment in writing. The Director, when responding in writing to Fee adjustment requests, shall apply the following procedures and may, as needed, develop different or additional procedures:

(a) Submission of Petition. Any customer may submit to the Director a petition in writing for fee adjustment. The customer shall include in the petition his or her contact name and address, the property address, the subdivision name, a property sketch, the total amount of impervious area, the total lot or parcel size, the location and size of any on-site or off-site stormwater treatment facilities, a legal description of the real property affected, a summary description of the asserted error or basis for exemption, variance, or mitigation, and the relief requested.

(b) Grounds for Appeal. If a customer submits a petition, the customer shall submit the petition in writing and set forth, in detail, the grounds upon which the customer seeks relief. Grounds for appeal of the fee may include, but are not limited to:

- (i) incorrect property classification for purposes of determining the fee;
- (ii) errors in the property's impervious surface area square footage;
- (iii) mathematical errors in calculating the property's applicable fee
- (iv) errors identifying the property owner of a fee-subject property; and
- (v) presence of on-site stormwater treatment facilities.

(c) Supplemental Information for Decision. The Director may require the petitioning customer, at the customer's expense, to provide supplemental information to the Director including, but not limited to, survey data approved by a registered professional land surveyor and engineering reports approved by a professional engineer. The Director may deny a customer's petition based on the failure to provide such information.

(d) Factors for Decision. When evaluating a petition for adjustment, the Director shall consider all relevant information and may consider:

- (i) Any on-site stormwater treatment facilities which are permitted by the local water management district, and
- (ii) Any on-site stormwater treatment facilities not requiring or having a local water management district permit but providing stormwater quality treatment consistent with the municipality's natural resource protection ordinance(s), the municipality's land development regulations, and the water quality standards for treated stormwater set forth in the Florida Administrative Code as amended.¹⁹

(e) Timing and Notice of Decision. The Director, on or before ninety (90) business days after receipt by the Director of a customer's completed petition, shall review and render a decision on the petition. The Director, in writing, shall provide notice to the petitioner in writing of acceptance or denial of a petition.

(f) Retroactivity of Adjustment Decision. The Director shall retroactively apply to the customer's first billing cycle any grants of adjustment resulting from a customer's petition. Retroactive adjustment will not exceed one (1) year, and the Director shall apply reimbursement the customer's future fee collections.

Appeal of Denial. If the Director denies a customer's petition, the customer, on or before the thirtieth (30) business day after the Director renders a final decision on the petition, a customer may appeal to the Town Manager for review of the denial. The Town Manager, on or before the thirtieth (30) business day after receipt of a customer's appeal, in writing, and detailing the basis for the Town's decision, shall render a final decision on the appeal. When reviewing appeals of adjustment petition denials, the Town shall apply the standards and review criteria contained in this section.

(h) Establishment of Appeals Committee. The Director may establish by resolution a stormwater utility appeals committee and delegate to the committee authority and responsibility to hear appeals. If the Director establishes the appeals committee, the committee shall follow the appeal procedures set forth in this section.

XII. Violation of Ordinance

(1) Determination of Violation. If a customer does not pay all or a portion the fee on or before the thirtieth business day after the Director mails the bill, the customer's bill becomes delinquent, and the Director may determine the customer to be in violation of this ordinance.

(2) Notice of Delinquency. The Director, on or before the fifteenth business day after a customer's bill becomes delinquent, shall mail or deliver to the customer notice of delinquency.

(3) Penalty for Violation. If a customer violates this ordinance and the Director mails the bill combined with other municipal utilities, the Town may discontinue those utility services, including, but not limited to, electric, garbage collection, water and wastewater, listed on the combined bill. To the maximum extent allowed by law, the Director may fine a customer in violation of this ordinance and charge interest on any portion of a customer's delinquent fee remaining unpaid. The Director may recover from a customer any attorney's fees incurred in collecting delinquent fees. If using the uniform method of collection, the Director may also pursue enforcement methods as provided for in Florida Statutes Chapter 197.²⁰

XIII. Borrowing against Enterprise Fund

Issuance of Bonds.²¹ The Director may borrow against the fund by requesting the municipality issue bonds, notes, or other evidences of indebtedness (referred to here as "bonds") to finance or refinance the costs of the system and to pay the costs of issuing the bonds. If the Director elects to use bonds, the Director shall issue the bonds pursuant to an ordinance adopted by a majority vote of the Town council, and the ordinance shall set forth the use and disposition of the proceeds of the bonds, the maturity date of the bonds and their interest rate or rate of accretion if applicable, the manner and method of payment, the rights and remedies of the holders thereof, the security for repayment and other covenants or conditions as the Town council may deem proper. The provisions of the bond ordinance and general law will be the only limitations and restrictions regarding bond issuance

XIV. Severability of Ordinance

If any provision, section, paragraph, sentence, clause, or portion of this ordinance or the application thereof to any person or circumstance, is, for any reason, held invalid or unconstitutional by a court of competent jurisdiction, such provision shall be deemed a separate, distinct, and independent provision, and such holding shall not affect the validity of the remaining provisions or portions thereof.

XV. Effective Date

This ordinance shall become effective immediately upon its adoption and filing, pursuant to law.

The foregoing Ordinance was adopted by the Town Council upon a motion by Councilman Mandel and seconded by Vice Mayor Andre and upon being put to a vote, the result was as follows:

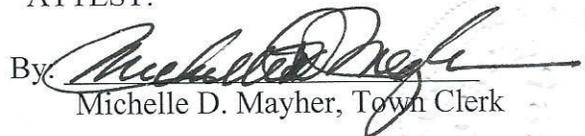
Anita Cereceda, Mayor	AYE	Dan Andre, Vice Mayor	AYE
Rexann Hosafros	AYE	Alan Mandel	AYE
Summer Stockton	AYE		

DULY PASSED AND ADOPTED THIS 21st DAY OF September, 2015, BY THE

TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH

By: 
Anita Cereceda, Mayor

ATTEST:

By: 
Michelle D. Mayher, Town Clerk

Approved as to form and legal sufficiency:

By: 
Derek Rooney, Town Attorney

Appendix

- ¹ See Table A in Appendix as amended
- ² Fla. Stat. § 403.0893(1) (2004) as amended; *see also* Fla. Stat. § 403.0891 (2004) as amended.
- ³ Fla. Stat. § 403.0891(6) (2004) as amended.
- ⁴ *See* City of Gainesville v. State, 863 So.2d 138, 141 (Fla. 2003).
- ⁵ *See* Hargett, C. William, Jr., *Creating a Stormwater Utility, Public Works?* (September 1992).
- ⁶ Fla. Stat. § 197.3632(1)(a) (2004) as amended.
- ⁷ Black's Law Dictionary 525 (2d ed. 2001) as amended.
- ⁸ Fla. Stat. § 403.031(5) (2004) as amended.
- ⁹ Black's Law Dictionary 607 (2d ed. 2001) as amended.
- ¹⁰ *See* FLA. ADMIN. CODE r. 62-25.020(13) (2004).
- ¹¹ *See* Fla. Stat. § 403.0891 (2004) as amended.
- ¹² Fla. Stat. § 403.0893(3) (2004) as amended.
- ¹³ Fla. Stat. § 403.031(16) (2004); as amended; FLA ADMIN. CODE r. 62-25.020(15) (2004) as amended.
- ¹⁴ Fla. Stat. § 403.031(17) (2004).
- ¹⁵ *See* City of Cocoa v. School Bd., 711 So. 2d 1322 (Fla. 5th D.C.A. 1998)
- ¹⁶ *See* to Table A in Appendix, as amended
- ¹⁷ *See* Fla. Stat. § 403.0893(3) (2004), as amended, which states fees collected for stormwater funding may be assessed using the methods set forth in Florida Statutes Chapter 197.
- ¹⁸ *See* to Table A in Appendix, as amended
- ¹⁹ *See* FLA. ADMIN. CODE r. 62-25.020 *et seq.*
- ²⁰ Fla. Stat. § 403.0893(3) (2004), as amended
- ²¹ *See* City of Gainesville v. State, 863 So. 2d 138, 141 (Fla. 2003) (holding a municipality may pledge stormwater fees as collateral for a bond issue).